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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:  
ACE FINANCIAL CORPORATION,  
Debtor.

Case No. 10-11289-B-11

Chapter 11

DC No. KDG-22

Date: September 1, 2010

Time: 3:00 p.m.

Place: U.S. Bankruptcy Court  
1300 18<sup>th</sup> Street

Bakersfield, California  
Judge: W. Richard Lee

**MOTION FOR ORDER AUTHORIZING SALE OF REAL PROPERTY**  
**(209 E. MONETA AVENUE, BAKERSFIELD, CA)**

ACE FINANCIAL CORPORATION ("Debtor"), respectfully represents:

**I. Introduction**

1. Debtor filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code on February 10, 2010. Debtor has managed its affairs as debtor-in-possession since the petition date.

2. Debtor owns residential property located at 209 East Moneta Avenue, Bakersfield, California, Assessor's Parcel No. 119-063-05-5 ( the "Real Property").

3. Debtor requests authority to sell the Real Property to an unrelated third party for \$82,000.00. Debtor believes that this is the market value of the Real Property based on the

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1 current market conditions. Mission Bank claims a perfected security interests in the proceeds  
2 of the sale (“the Proceeds”), but agrees that Debtor may sell the Real Property under the terms  
3 and conditions described in this Motion.

4 **II. Potential Liens against the Real Property**

5 4. The Real Property is subject to the following claims of lien:

6 Name	Nature of Security Interest	Amount of Lien
7 Kern County Tax Collector	Real Property Taxes	\$ 15,069.00
8 Mission Bank	UCC-1 Recorded 11/06/2007	\$ 745,000.00

9  
10 5. Mission Bank asserts an interest in the Excess Proceeds received from the sale  
11 of the Real Property pursuant to its Business Loan Agreement, the Promissory Note, and  
12 Commercial Security Agreement with Debtor. Mission Bank filed a UCC-1 Financing  
13 Statement with the California Secretary of State on or about December 22, 2003, and a  
14 continuation on November 6, 2008, to perfect its security interests as provided in the Business  
15 Loan Agreement and Commercial Security Agreement. Copies of the UCC-1 Financing  
16 Statements filed by Mission are included as exhibits to *Motion by Debtor for Order Authorizing*  
17 *Use of Cash Collateral* (KDG-1).

18 **III. Offer to Purchase**

19 6. Debtor received an offer from DFHN, Inc. (“Buyer”), to purchase the Real  
20 Property for \$82,000.00. Debtor has no connection with Buyer or persons related to Buyer and  
21 Buyer is a “disinterested person” as defined in 11 USC Section 101.

22 7. Buyer’s offer was obtained with the assistance of real estate brokers, Coldwell  
23 Banker Preferred Realtors, representing Debtor, and Miramar Real Estate Group, representing  
24 Buyer. Debtor agreed to pay 6% commission upon the sale of the Real Property to the Broker  
25 and/or Brokers who assisted in the sale, which makes the brokerage fees arising from the  
26 proposed sale price about \$4,920.00. The Court approved the employment of Coldwell Banker  
27 Preferred Realtors in the *Order Authorizing Employment of Real Estate Broker-Coldwell*  
28 *Banker Preferred Realtors* entered on July 16, 2010. Debtor believes that 6% is a standard

1 commission for the sale of residential real property, and is a reasonable fee to pay Coldwell  
2 Banker Preferred Realtors and Miramar Real Estate Group for their services. The brokers'  
3 commission will be paid out of escrow from the proceeds of the sale. In addition to the  
4 brokers' commissions, other customary closing costs will be paid out of escrow from the  
5 proceeds of the sale.

6 8. A copy of the Residential Purchase Agreement and Joint Escrow Instructions is  
7 attached as Exhibit "A" to the *Exhibits in Support Motion for Order Authorizing Sale of Real*  
8 *Property (209 East Moneta Avenue, Bakersfield, CA)* filed concurrently herewith ("the  
9 Exhibits"). Escrow is to close no later than thirty days after the Court approves the sale of the  
10 Real Property. All contingencies are waived, and this is a cash sale.

11 9. The offer to purchase the Real Property is subject to higher and better bids  
12 received at the time of the hearing.

#### 13 **IV. Distribution of Proceeds**

14 10. After the payment of ordinary costs of sale, commissions and the real property  
15 taxes described above, 85% of the Proceeds out of escrow shall be paid to Mission Bank  
16 pursuant to the Parties' Cash Collateral Stipulations. Debtor will receive 15% of the Proceeds.

#### 17 **V. Argument**

18 11. Debtor requests authorization to sell the Real Property under 11 USC Sections  
19 363(b)(1).

20 12. Under 11 U.S.C. section 363(b)(1), the Debtor may use, sell, or lease, other than  
21 in the ordinary course of its business, property of the estate. The Debtor's decision to sell,  
22 which is outside of the normal course of its business, must be based on its reasonable business  
23 judgment. *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5<sup>th</sup> cir. 1986). The court  
24 may approve the sale if the Debtor establishes "some articulated business justification" for the  
25 transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983). *In re Lionel Corp.*, 722  
26 F.2d 1063, 1070 (2d Cir.1983); *In re Walter*, 83 B.R. 14 (9<sup>th</sup> Cir. BAP 1988); *In re Ernst Home*  
27 *Ctr.*, 209 B.R. 974, 979 (Bankr. D. Wash. 1997). Furthermore, the Bankruptcy Court can  
28 authorize a sale of an asset of a Chapter 11 estate before the acceptance of and outside of a Plan

1 of Reorganization “when a sound business purpose dictates such action.” *In re Stephens*  
2 *Industries, Inc.*, 789 F. 2d 386, 389-390 (6th Cir. 1986); *see also In re Lionel Corporation*, 722  
3 F.2d 1063, 1070 (2d Cir. 1983).

4 13. These facts constitute an “articulated business justification” for the transaction.  
5 The sale of the Real Property is outside of the ordinary course of business conducted by  
6 Debtor. Debtor believes the sale of the Real Property before confirmation of a Plan of  
7 Reorganization is justified, in the best interest of the estate, and a sound business decision  
8 because: (1) Debtor is no longer engaged in the business of hard money lending as it has been  
9 in the past; (2) the Real Property is not needed to support Debtor’s business; (3) Debtor intends  
10 to liquidate its assets in order to pay its creditors; (4) Debtor must sell all of the real property  
11 owned by it in order to fund its Plan; (5) Debtor does not wish to lose the opportunity to sell the  
12 Real Property; and (6) it will allow Debtor to reduce its secured indebtedness by about  
13 \$51,000.00.

14 14. For all those reasons, the proffered sale and division of proceeds is an exercise  
15 of Debtor’s sound business judgment.

## 16 VI. PRAYER

17 WHEREFORE, Debtor prays that:

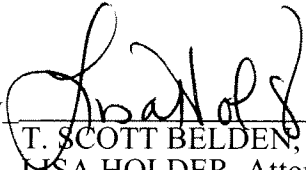
- 18 1. The Motion be granted;
- 19 2. Debtor be authorized to sell the Real Property to DFHN, Inc., or nominee  
20 (“Buyer”), for \$82,000.00—or to the highest bidder at the time of the hearing for such higher  
21 and better price or terms as Debtor may obtain—as described in the Notice of Hearing;
- 22 3. Debtor be authorized to pay customary costs of sale, broker commissions, and  
23 the Kern County Tax Collector out of escrow;
- 24 4. Debtor be authorized to pay 85% of the Proceeds to Mission Bank on account of  
25 its lien, and as provided under the Cash Collateral Stipulations;
- 26 5. Debtor be authorized to retain 15% for the benefit of the estate;
- 27 6. Debtor’s principal be authorized to execute additional documents as are  
28 reasonable and necessary to effectuate the sale to Buyer or the highest bidder, and

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7. Debtor be given such other relief as the Court deems to be just and proper.  
Date: August 24, 2010

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By   
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